

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 187 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

SOMABHAI KALABHAI

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Appearance:

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Petitioner

MR BP DALAL for Opponent No. 1

MR JR NANAVATI for Opponents Nos. 2, 5

MR HB SHAH for Opponent No. 4

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 01/09/97

ORAL JUDGEMENT

The respondent no.1 is an original accused is strictly not a contesting party in this matter because, essentially the State has a grievance against the order of discharge granted by the ld. Chief Judicial Magistrate, Himatnagar, on 2.3.1989 while deciding applications at Exhs.51 and 58 of Criminal Case No. 97 of 1988.

The respondents nos.2 to 5 are practising Advocates of Modasa, District Sabarkantha. Respondents nos.2 and 4 are Senior Advocates and respondent no.3 was

working at the relevant time with respondent no.2 and likewise respondent no.5 also.

There were number of matters of land acquisition reference arising out of the acquisition proceedings carried out in respect of irrigation project of village Nanawada. Generally, in group matters pertaining to land when they are filed, instructions are given to Advocate either by a leader of that Group or a senior worker of that area who would be guiding the claimants.

Unfortunately, out of several matters in respect of one reference, it so happened that, right from Section 4 stage upto Section 18 reference as well as the payment pursuant to the reference judgment, claimant Magan Kala, though not alive, all proceedings in respect of his land continued in the manner though in fact, it was Soma Kala, the respondent no.1 herein who was physically remaining present whenever necessary and signing also, was not signing for himself, but was signing as Magan Kala.

This would mean that, prima facie, he continued to represent Magan Kala, though the respondent no.1 as real brother of Magan Kala, he definitely know that his brother Magan Kala is no longer alive.

The reference Court, therefore, directed that on proper inquiry, complaint to be lodged and that is how, Criminal Case No. 97 of 1988 came to be lodged through the Nazir of the District Court in the Court of ld. Chief Judicial Magistrate, Himatnagar.

So far as accused opponent no.1 is concerned, the ld. PP applied before the ld. Chief Judicial Magistrate that the further investigation be carried out in respect of opponent no.1 and that prayer came to be granted by a common order passed below applications at Exhs.51 and 58.

Against that order, the opponent no.1 had filed Criminal Revision Application No. 164 of 1989 before this Court which he has withdrawn today, and therefore, the said order against him remains as it is.

The ld.Chief Judicial Magistrate, at the same time, considered the request of the opponents nos.2 to 5 for being discharged. He held in their favour and that is why the State filed the present Revision Application.

Ld.Advocates Shri J.R.Nanavati with Shri B.P. Dalal for respondent no.4 carried me through the order of the trial Court and in my opinion they were successful in

pointing out that there is no reason for this Court to interfere with the finding of the ld.Chief Judicial Magistrate.

Ld.APP Shri Mehta appearing for the petitioner State did draw my attention to the fact that, of the four opponents nos.2 to 5, opponent no.3 on a subsequent occasion, had dealt with the administration certificate being granted by the Administrator in respect of the estate of deceased Magan Kala. But, in absence of any material to indicate that the opponent no.2 knew that who came to him as Soma Kala and he was the same person who was posing himself as Magan Kala, throughout the reference proceedings, merely because, opponent no.3 being associated with his Senior Advocate opponent no.2, he signed the Vakalatnama, it cannot be said that, right from the beginning, he was a party to this mis-representation and impersonation.

Once this aspect is clear except for signing the Vakalatnama and representing the group of matters out of various matters, in respect of only one matter, this sort of impersonation has occurred, it is not possible to hold that the accused opponents nos.2 to 4 were party to the scheme devised by the opponent no.1. In the absence of any such material, obviously, therefore, there cannot be any charge levelled against them.

That is precisely the ld. Chief Judicial Magistrate has done and has come to the conclusion and I do not find any jurisdictional error of law having been committed. The revision application is dismissed. Rule is discharged.

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